

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOXWAVE CORPORATION, a Nevada  
corporation,

Plaintiff,

v.

MG DIRECT LLC, a New Jersey limited  
liability company; MG DIRECT IMPORTS  
LLC, a New Jersey limited liability company.

Defendants.

NO. 2:11-cv-01286

COMPLAINT FOR:

- (1) FEDERAL UNFAIR COMPETITION 15  
U.S.C. § 1125(a);
- (2) UNFAIR COMPETITION AND  
VIOLATION OF WASHINGTON  
STATE CONSUMER PROTECTION  
ACT, RCW 19.86, *et seq.*;
- (3) COMMON LAW TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION; and
- (4) TORTIOUS INTERFERENCE WITH  
BUSINESS EXPECTANCIES AND  
RELATIONS.

1 Plaintiff, BoxWave Corporation alleges as follows:

2 **I. PARTIES.**

3 1.1 Plaintiff BoxWave Corporation (“BoxWave”) is a Nevada corporation with its  
4 principal place of business in Kirkland, Washington.

5 1.2. Defendant MG Direct LLC (“MG Direct”) is a New Jersey limited liability  
6 company. On information and belief, MG Direct has offices in Lodi, New Jersey. MG Direct  
7 conducts its business under the names MG Direct and MG Direct Imports and at the websites  
8 [www.mgdirect.co](http://www.mgdirect.co) and <https://mgdirect.3dcartstores.com> and possibly others.

9 1.3 Defendant MG Direct Imports LLC (“MG Direct Imports”) is a New Jersey  
10 limited liability company. On information and belief, MG Direct Imports has offices in Lodi,  
11 New Jersey and/or Elmwood Park, New Jersey. MG Direct Imports conducts its business under  
12 the names MG Direct and MG Direct Imports and at the websites [www.mgdirect.co](http://www.mgdirect.co) and  
13 <https://mgdirect.3dcartstores.com> and possibly others.

14 **II. JURISDICTION AND VENUE.**

15 2.1 The Court has subject matter jurisdiction over Count I pursuant to 15 U.S.C. §  
16 1121 and 28 U.S.C. §§ 1331 and 1338. The court has supplemental jurisdiction over Counts II-  
17 IV pursuant to 28 U.S.C §1367.

18 2.2 The Court has personal jurisdiction over the Defendants because a substantial  
19 portion of the events alleged in support of the claims in this action occurred in the State of  
20 Washington and in this District. Defendants do business; advertise and promote their products  
21 and services; and have committed trademark infringement, false designation of origin, unfair  
22  
23

1 competition, and Washington Consumer Protection Act violations in Washington State and in  
2 this District.

3 2.3 Defendants have committed acts in this District in furtherance of the claims  
4 alleged herein, including violations of 15 U.S.C. §1125(a). Venue is proper pursuant to 28  
5 U.S.C. §1391.

### 6 III. FACTS.

7 3.1 BoxWave is a retailer of accessories for cellular telephones and other mobile  
8 devices. BoxWave has been in business since 2002. BoxWave sells its products throughout the  
9 United States and throughout the world at [www.boxwave.com](http://www.boxwave.com) and through other third-party  
10 retailers.

11 3.2 From at least November 9, 2010, and continuously to the present, BoxWave has  
12 owned and used the trademark “KEYBOARD BUDDY” in interstate commerce (the “Keyboard  
13 Buddy Mark”) for protective cases and keyboards for mobile devices. On March 9, 2011,  
14 BoxWave filed an application to register the Keyboard Buddy Mark with the USPTO in  
15 International Class 009 for “*peripherals, namely, protective cases and keyboards for mobile*  
16 *devices in the nature of cellular phones and smart phones*”. This application is currently pending  
17 at the USPTO, and was assigned Application Serial Number 76/706716.

18 3.3 Using the KeyBoard Buddy Mark, BoxWave has delivered products to customers  
19 throughout the United States and worldwide. The BoxWave products sold under the KeyBoard  
20 Buddy Mark have received praise from consumers and industry accolades. BoxWave has  
21 invested substantial sums of time, money and effort to develop, use, advertise and promote the  
22 KeyBoard Buddy Mark. As a result, the KeyBoard Buddy Mark has become an integral and  
23

1 indispensable part of BoxWave's business and has accumulated a substantial amount of  
2 goodwill.

3       3.4     At least as early as June, 2011, BoxWave discovered Defendants using the  
4 Keyboard Buddy Mark on Defendants' websites ([www.mgdirect.co](http://www.mgdirect.co) and  
5 <https://mgdirect.3dcartstores.com>) to promote and sell Defendants' products. BoxWave has not  
6 licensed or otherwise authorized Defendants to use its trademarks. It is believed and therefore  
7 alleged that Defendants' infringing use of BoxWave's trademarks began before June, 2011.

8       3.5     Defendants have used and currently use the Keyboard Buddy Mark in listing  
9 titles, item descriptions, and/or keywords on their websites to promote, advertise and sell  
10 Defendants' product. By using BoxWave's trademark in listing titles, item descriptions, and/or  
11 keywords, consumers will cause or is likely to cause consumers and the public to believe  
12 erroneously that the goods sold by Defendants originate from or are authorized, sponsored, or  
13 approved by BoxWave. An example of Defendants' infringing use of the Keyboard Buddy Mark  
14 is attached hereto as **Exhibit A**.

15       3.6     On June 20, 2011, counsel for BoxWave wrote MG Direct and demanded that it  
16 cease infringement and use of the Keyboard Buddy Mark. Through counsel, BoxWave also  
17 demanded that MG Direct immediately terminate all infringing or unauthorized use of the  
18 Keyboard Buddy Mark together with all similar marks and acknowledge that all items  
19 constituting infringement or use of the mark have been removed from its products, catalogs,  
20 brochures, marketing materials (including all websites, search engines and social networking  
21 pages under its direction and/or control), advertising, invoices or similar notices and/or  
22 publications.  
23

1           3.7     On June 21, 2011, counsel for BoxWave received an email response from  
2     [sales@mgdirect.co](mailto:sales@mgdirect.co) stating that they are not using the term “boxwave” and requesting further  
3     clarification. On June 22, 2011, counsel for BoxWave responded to [sales@mgdirect.co](mailto:sales@mgdirect.co) stating  
4     that the concern related to the Keyboard Buddy Mark, not the term “boxwave”.

5           3.8     Defendants have not provided any further response to BoxWave’s notice of  
6     infringement nor have Defendants complied with the request to cease use of the Keyboard Buddy  
7     Mark. Defendants continue to systematically and continuously advertise and sell goods  
8     unlawfully using the Keyboard Buddy Mark.

9                           **IV. COUNT I: FEDERAL UNFAIR COMPETITION.**  
10                           (15 U.S.C. § 1125(a))

11           4.1     BoxWave re-alleges and incorporates herein by reference the allegations set forth  
12     above as part of this cause of action.

13           4.2     BoxWave has valid and enforceable trademark rights in the Keyboard Buddy  
14     Mark.

15           4.3     Defendants’ use of the Keyboard Buddy Mark and/or any confusingly similar  
16     terms in connection with goods or services in commerce is likely to cause confusion, or to cause  
17     mistake, or to deceive as to the affiliation, connection, or association of Defendants with  
18     BoxWave, or as to the origin, sponsorship, or approval of Defendants’ goods and/or services.  
19     Defendants’ actions as alleged herein constitute false designation of origin, unfair competition,  
20     false representations and false advertising pursuant to 15 U.S.C. § 1125(a).

21           4.4     As a direct and proximate result of Defendants’ false designation of origin, unfair  
22     competition, false representations and false advertising as alleged herein, BoxWave has been,  
23     and continues to be, injured in its business and property and has sustained, and will continue to

1 sustain, monetary damages to its business, goodwill, reputation and profits in amount to be  
2 proven in trial. BoxWave is entitled to an award of Defendants' profits, exemplary damages, and  
3 award of attorneys' fees and costs pursuant to 15 U.S.C. § 1117.

4 4.5 BoxWave has no adequate remedy at law against Defendants' violations of 15  
5 U.S.C. §1125(a). Unless Defendants are preliminarily and permanently enjoined from their false  
6 designation of origin, unfair competition, false representations and false advertising as alleged  
7 herein, BoxWave will continue to suffer irreparable harm. BoxWave seeks preliminary and  
8 permanent injunctive relief enjoining Defendants from use of the Keyboard Buddy Mark and any  
9 confusingly similar term.

10 **V. COUNT II: WASHINGTON STATE CONSUMER PROTECTION ACT.**  
11 (RCW 19.86, *et seq.*)

12 5.1 BoxWave re-alleges and incorporates herein by reference the allegations set forth  
13 above as part of this cause of action.

14 5.2 Defendants engaged in unfair and deceptive acts or practices as alleged herein,  
15 including, but not limited to the unauthorized and infringing use of BoxWave's trademark in  
16 connection with the marketing and sale of goods and/or services.

17 5.3 Defendants' deceptive acts or practices injured BoxWave and its business.

18 5.4 Defendants' actions affect the interest of the general public in that the  
19 unauthorized and infringing use of BoxWave's trademark in connection with the marketing and  
20 sale of goods and/or services misleads and confuses the public and consumers as to the source of  
21 the goods and/or services.

22 5.5 BoxWave has suffered damages relating Defendants' violation of the Consumer  
23 Protection Act (RCW 19.86, *et seq.*) in an amount to be proven at trial.

1           5.6     BoxWave seeks, and is entitled to recover, its actual damages, together with the  
2 costs of suit, including reasonable attorney's fees. BoxWave seeks and is entitled to recover an  
3 award of damages of up to three times the amount of the actual damages sustained.

4           5.7     BoxWave has no adequate remedy at law to redress the damage as a result of  
5 Defendants' Consumer Protection Act violations as alleged herein. Unless Defendants are  
6 preliminarily and permanently enjoined from their Consumer Protection Act violations,  
7 including, but not limited to the unauthorized and infringing use of BoxWave's trademark as  
8 alleged herein, BoxWave will continue to suffer irreparable harm. BoxWave seeks preliminary  
9 and permanent injunctive relief enjoining Defendants from the unauthorized and infringing use  
10 of BoxWave's trademark and any confusingly similar terms.

11                   **VI. COUNT III: COMMON LAW TRADEMARK INFRINGEMENT**  
12                   **AND UNFAIR COMPETITION.**

13           6.1     BoxWave re-alleges and incorporates herein by reference the allegations set forth  
14 above as part of this cause of action.

15           6.2     Defendants' use of the Keyboard Buddy Mark and/or any confusingly similar  
16 terms in connection with the sale of goods and/or services as alleged herein is misleading and is  
17 likely to cause consumer confusion and mistake and deprives BoxWave of the benefit and  
18 goodwill of Keyboard Buddy Mark.

19           6.3     BoxWave seeks, and is entitled to recover damages as a result of Defendants'  
20 common law trademark infringement and unfair competition in an amount to be proved at trial.

21           6.4     BoxWave has no adequate remedy at law to redress the damage as a result of  
22 Defendants' common law trademark infringement and unfair competition as alleged herein.  
23 Unless Defendants are preliminarily and permanently enjoined from their unauthorized and

1 infringing use of BoxWave's common law trademark as alleged herein, BoxWave will continue  
2 to suffer irreparable harm. BoxWave seeks preliminary and permanent injunctive relief enjoining  
3 Defendants from their unauthorized and infringing use of BoxWave's common law trademark  
4 and any confusingly similar terms.

5 **VII. COUNT IV: TORTIOUS INTERFERENCE WITH BUSINESS**  
6 **EXPECTANCIES AND RELATIONS.**

7 7.1 BoxWave re-alleges and incorporates herein by reference the allegations set forth  
8 above as part of this cause of action.

9 7.2 BoxWave has a valid interest in its business expectancies and relationships,  
10 including, but not limited to its current and future customers.

11 7.3 Defendants, by their unauthorized and infringing use of BoxWave's trademarks as  
12 alleged herein, tortiously interfered with BoxWave's business expectancies and relationships.

13 7.4 As the direct and proximate result of Defendants' tortious interference with  
14 BoxWave's business expectancies and relationships, BoxWave has suffered and continues to  
15 suffer damages, both direct and consequential.

16 7.5 BoxWave is entitled to injunctive relief as well as judgment against Defendants  
17 for all damages, direct and consequential, in an amount to be proven at trial.

18 **VIII. RESERVATION.**

19 8.1 BoxWave re-alleges and incorporates herein by reference the allegations set forth  
20 above as part of this cause of action.

21 8.2 BoxWave reserves the right to add other defendants, claims and causes of action  
22 based upon investigation and discovery as it develops in this case.  
23



**X. RELIEF REQUESTED.**

WHEREFORE, plaintiff BoxWave requests relief as follows:

1. Injunctive relief preliminarily and permanently restraining and enjoining Defendants, their agents, servants, employees and all others in active concert or participation with Defendants from further infringing on BoxWave's trademarks in any manner.

2. An award of damages suffered by BoxWave as a result of Defendants' infringement of BoxWave's false designation of origin, common law trademark infringement, unfair competition, Consumer Protection Act violations, and tortious interference with business relationships

3. An accounting by Defendants of all gains, profits and advantages derived by Defendants as a result of the acts alleged herein.

4. An order directing Defendants to disgorge and pay to BoxWave Defendants' profits as a result of the acts alleged herein.

5. An award of statutory and/or exemplary damages under 15 U.S.C. § 1117 and/or RCW 19.86, *et seq.*

6. An award of attorney's fees and cost as permitted by statute.

7. For such other relief as the Court deems just and proper.

**XI. JURY DEMAND.**

BoxWave requests a trial by jury on all issues triable by a jury.

1 DATED this 3rd day of August, 2011

2 IRONMARK LAW GROUP, PLLC

3  
4 By s/Nicholas R. Gunn/  
5 Nicholas R. Gunn, WSBA No. 36926  
6 Christopher S. Beer, WSBA No. 27426  
7 2311 N. 45th Street, Suite 365  
8 Seattle, Washington 98103  
9 Tel: (206) 547-1914  
10 Fax: (206) 260-3688  
11 Email: [nrgunn@ironmarklaw.com](mailto:nrgunn@ironmarklaw.com)  
12 [csbeer@ironmarklaw.com](mailto:csbeer@ironmarklaw.com)  
13 Attorneys for BoxWave Corporation  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23